



Toni Acton
Associate Director

SBC Telecommunications Inc.
1401 I Street NW, Suite 400
Washington, D.C. 20005
Phone 202 326-8843
Fax 202 408-4807

May 21, 2004

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Presentation**
Provision of Directory Listing Information Under the Communications Act of
1934, As Amended, CC Docket 99-273

Dear Ms. Dortch:

SBC Communications, Inc. respectfully submits this written ex parte in response to InfoNXX Inc.'s ("InfoNXX") March 30, 2004, written ex parte.¹ SBC provides the following information relating to the issues under consideration in its petition and the impact of these issues on the Directory Assistance Listings ("DAL") marketplace.

InfoNXX contends in its ex parte that the Commission should deny the SBC/BellSouth Petition and affirm that (1) ILECs must provide non-ILEC DA providers with all subscriber information in their DA databases; (2) ILECs may not impose use restrictions on non-ILEC DA providers which differ from the restrictions applicable to the ILECs' own DA operations; and (3) state regulators should be responsible for determining DA use restrictions and should not impose any restrictions that prevent the use of DA listings to provide DA-related information services.

SBC provides DAL in a nondiscriminatory manner consistent with Section 251(b)(3). SBC does not restrict the use of DAL information in any agreement or tariff in compliance with the FCC's Directory Listing Information ("DLI") Order². SBC has issued multiple Accessible Letters to the industry informing of our immediate compliance with the DLI Order.

Contrary to InfoNXX's assertions, the marketplace for DAL information is already competitive. To date, SBC has lost in excess of fifty percent of its DAL customers since the release of the DLI Order on January 23, 2001. InfoNXX, Metro One, Reach Direct, and Experian, all former SBC DAL customers in all SBC regions, now obtain SBC listings from a source other than SBC. This fact unequivocally demonstrates that the wholesale DAL services market is competitive.

¹ Ex Parte letter from Gerard J. Waldron (InfoNXX) and Mary Newcomer Williams (InfoNXX) to Marlene H. Dortch (FCC), CC Docket No. 99-273 (March 30, 2004) ("InfoNXX Letter").

² Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2738 (2001) ("DLI Order").

SBC agrees with Qwest that the Commission has long required the providers of DAL information to accommodate individuals' privacy expectations.³ Also, the Commission has determined that the "nondiscrimination" standard associated with Section 251(b)(3) obligates a LEC to provide the same information to other DA providers that it makes available to its own DA operators.⁴ The Commission went on to say that this would not disadvantage competitive LECs, but would be consistent with the Act and its equal access provisions.⁵

In response to Ms. Scholl's comments in paragraph 8 of her affidavit, SBC does indeed supply to its DAL customers the exact same information it supplies to its DA operators.⁶ When a SBC DA operator accesses a non-published listing, the operator sees the name, address, and a non-published indicator signifying that the customer's listing information is not to be published or provided by a DA operator. InfoNXX, as a DA provider, has the ability to utilize the non-published indicator along with its own operational methods to inform its subscriber that the listing requested has been made private at the request of the customer. However, SBC's DAL information is only as accurate as the subscriber information provided to SBC by the ILECs and CLECs that wish to include their listings in SBC's White Page and Directory Assistance databases. For example, there may be instances where some CLECs or ILECs neglect to provide their non-published subscriber listing information to SBC in order to avoid non-published service charges from SBC.

InfoNXX's assertions that non-published telephone numbers should be provided in DAL downloads and updates are without merit, and are in direct opposition to many previous Commission rulings as referenced above. InfoNXX's assertions could cause numerous SBC customer complaints because of increased telemarketing to non-published SBC customers. These assertions would also violate existing state regulatory approved contracts and instigate unnecessary marketplace confusion.

SBC should have the ability to negotiate reasonable DAL use restrictions and should have the contractual freedom to negotiate DAL rights and compensations with CLECs or their agents. In this regard, to the extent DAL is to be used by a CLEC for marketing purposes, SBC should be able to negotiate reasonable limitations, including whether the bulk resale of its DAL without compensation is appropriate. If bulk resale of DAL is agreed upon, SBC should be compensated for the use of its DAL by non-purchasing

³ *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, 92-237, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd. 19392, 19457-58 ¶ 135 (1996) ("*Local Competition Second Report and Order*"), vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), rev'd, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

⁴ *Id.*, and see *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, Third Report and Order* in CC Docket No. 96-115, *Second Order on Reconsideration of the Second Report and Order* in CC Docket No. 96-98, and *Notice of Proposed Rulemaking* in CC Docket No. 99-273, 14 FCC Rcd. 15550, 15638-39 ¶ 167 (1999) ("*Second Order on Reconsideration*").

⁵ *Second Order on Reconsideration*, 14 FCC Rcd. at 15638-39, ¶ 167 (emphasis added).

⁶ InfoNXX letter, Affidavit of Margaret Scholl at 2.

third parties. In situations where competitive DA providers are purchasing SBC's DAL, market-based pricing should apply.

The Telecommunications Act of 1996 supports SBC's position. Section 251 (b)(3) provides that LECs shall provide nondiscriminatory access to directory assistance listings. The Act does not prohibit LECs from negotiating reasonable nondiscriminatory restrictions with another party as long as these restrictions do not limit that party's access to the listings. Restrictions that limit a party's right to sell the listings in bulk to a telemarketing company, or to use the listings to publish a telephone directory, for instance, do not restrict a party's access to the listings. Similarly, restrictions on a party's ability to resell the listings in bulk without corresponding compensation would not restrict that party's access to the listings. The party could continue to access the listings, which is all that is required under Section 251 (b)(3). If, however, the party wants to resell the listings, the party should compensate the LEC for the resold listings. Such arrangements already exist between SBC's LECs and various independent telephone companies. In the BellSouth Louisiana II decision, the FCC ruled that under Section 271 (c)(2)(B)(vii), BellSouth had to release all DA listings in its database to requesting CLECs, not just BellSouth's listings.⁷ As a result of that decision, SBC's LECs entered into agreements with various independent telephone companies that allow SBC's LECs to release the independent telephone company listings contained in SBC's regional DA databases to requesting CLECs, provided SBC's LECs compensate the independent telephone company when the listing is resold. Such limitations have not restricted the ability of SBC's LECs to access independent telephone company directory assistance listings, and provide such listings, along with its SBC listings, to requesting CLECs.⁸

Indeed, the Commission should permit carriers to impose reasonable DAL use restrictions and allow carriers the flexibility to negotiate DA listings rights and compensation. Reasonable use restrictions are supported by tariffs and interconnection agreements approved by state commissions.

If you have any questions, please contact the undersigned.

Sincerely,

/s/ **Toni R. Acton**

cc: Michelle Carey
William Dever
Rodney McDonald

⁷ *Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services Louisiana*, CC Docket No. 98-121, *Memorandum and Order*, 13 FCC Rcd 20599 (1998).

⁸ *See also*, CPUC Decision 00-10-026, *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service* (Oct. 2000), where the Commission supported the concept that a carrier should be compensated when listings are resold. Specifically, the Commission found that Pacific Bell could release Roseville Telephone directory assistance listings in the Pacific Bell directory assistance database to requesting CLECs, but required Pacific Bell to inform third party purchasers of Roseville's listings that they must pay Roseville for applicable charges under Roseville's directory assistance listings tariff.